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SUPREME COURT, U.S.

No. 06-360

In The

Supreme Court of the United States

ANTHONY G. VASEK,

Petitioner,

v.

MT. SAN JACINTO COLLEGE DISTRICT et al.,

Respondents.

On Petition For A Writ Of Certiorari
To The California Court Of Appeal
Fourth Appellate District, Division Two

REPLY TO RESPONDENT MASON'S OPPOSITION

ANTHONY G. VASEK,
Petitioner In Propria Persona
P.O. Box 1551
San Jacinto, CA 92581-1551
(949) 697-4268

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PETITIONER'S RESPONSES TO RESPONDENT MASON'S FLAWED ARGUMENTS

Three separate oppositions to the instant petition were filed by Respondent Keenan, Respondent Mason, and District Respondents. Because of the overlapping nature of respondents' arguments, the discussion of some of the points raised by Respondent Mason's opposition may appear in Petitioner's replies to the two other oppositions.

I. Despite Respondents' claims to the contrary, Petitioner was entitled, *as of right*, to have the defendants, erroneously deemed by the trial court to have been dismissed from the case, appear in the trial court to answer the complaint.

Initially, Petitioner had indicated to the trial court that, prior to amending his complaint, he would file a motion for leave to amend the complaint as to all defendants. On further reflection, however, Petitioner realized that, based upon the specific circumstances of the case, the limitations which the trial court sought to place upon him in fact violated Petitioner's inherent rights and the holding in *Felder v. Casey* (1988), 487 U.S. 131. Petitioner, therefore, refocused his attention on preserving his inherent rights and asserting the protections afforded by *Felder*.

Though Respondent Mason claims, on page 12 of his opposition to the instant petition, that he does not know why Petitioner made no attempt to seek leave of court to amend his complaint, Mason in fact is well aware of Petitioner's reasons for not doing so; for, Mason was one of the first to challenge Petitioner on this issue, arguing in one of his trial court papers (*cf.*, Pet.App. at 114):

> "If VASEK wishes to add parties to this action, he has a remedy in the form of a motion for leave to file an

> amended complaint. See, CCP section [sic] 473(a). If VASEK convinces this Court that an amendment is proper, then an amendment can be permitted. *Otherwise, VASEK will have to litigate this matter on the terms and with the parties as set forth.*" (Emphasis is added.)

Petitioner challenged these assertions in appellate papers which were served upon Mason and all other respondents. Said papers argued that Petitioner could not be required to first go through the time and expense of filing a motion pursuant to California Code of Civil Procedure §473(a)---and the possibility of receiving an adverse ruling---in order to obtain something which he could, and did, *demand as of right.* (Pet.App. at 113-118.)

II. Petitioner did not violate the trial court's order granting him leave to file an 8th amended complaint, as Respondents claim.

When it granted Petitioner leave to amend his complaint, the trial court stated: "Any new allegations by the plaintiff are to be limited solely to *addressing the pleading defect placed at issue by Grosz and Hartley's motion* for judgment on the pleadings." (E033583 CT 295, lines 6-8; emphasis is added.) The pleading defect placed at issue by Grosz and Hartley's motion for judgment on the pleadings was "failure to file suit within the applicable statute of limitations period." (E033583 CT 55, lines 2-3.) Thus, the trial court's order did not say, as Respondents would have us believe, that Petitioner could not amend his complaint as to anyone other than Grosz and Hartley.

In composing his 8th amended complaint, Petitioner followed the appellate court's specific guidelines as stated on page 43 of its previous opinion:

> "'To establish a continuing violation [a plaintiff has] to show "a series of related acts, *one or more of which falls within the limitations period*, or the maintenance of a discriminatory system both before and during the [limitations] period.'" [Citations.] A continuing violation may thus be established not only by demonstrating a company wide policy or practice, *but also by demonstrating a series of related acts against a single individual.* [Citation.] In the latter instance, '[the] question . . . boils down to whether sufficient evidence supports a determination that the "alleged discriminatory acts are related closely enough to constitute a continuing violation."'" (Emphases are added.)

Thus, to show that Grosz's and Hartley's acts against Petitioner were among the first in a *continuing* series of related acts that eventually culminated in the malicious prosecution of an administrative proceeding against him, Petitioner was forced to introduce new allegations that involved other defendants who committed related acts that fell within the limitations period. That was well within the dictates of the trial court's order, since the continuing violation is relevant to whether Grosz and Hartley were part of a single overriding and all-encompassing conspiracy.

III. Respondent Mason and others like him are muddying the waters to mislead this Court and evade culpability for wrongs committed against Petitioner.

Respondent Mason claims on page 2 of his opposition that on remand he "filed a demurrer to the third amended complaint, *the most recent version naming Mason.*" (Emphasis is added.) The statement is untrue, but Mason's attorney insists on promulgating it even though its falsehood has been repeatedly brought to her attention. She persists in

her efforts to misstate the facts not only to help Mason evade culpability for wrongs committed against Petitioner but also to mislead this Court regarding the issues at play here. To demonstrate how far she has gone---and is willing to go---to achieve her aims, Petitioner offers the following as insight into the *quo animo* of Mason's attorney and, to a lesser degree, the rest of the respondents herein.

In a previous attempt to evade the damning realities of her client's involvement in the retaliatory measures taken against Petitioner under color of law, as described in Petitioner's seventh amended complaint (*cf.*, Related Appeal E020125 CT 35-89), Mason's attorney filed a bogus demurrer to Petitioner's third amended complaint and claimed therein that the last pleading to name Mason as a party was the third amended complaint. (E033583 SCT 133, line 18.) The record clearly shows, however, that the last pleading to do so before remand was the *seventh* amended complaint, a fact about which Ms. Roberts was clearly aware since *her own* declaration in support of her previous motion to compel had stated: "...and today the operative complaint is the *Seventh* Amended Complaint." (E033583 SCT 58, ¶; emphasis is added.)

To overcome Petitioner's challenge (*cf.*, E033583 CT 350, line 16 to E033583 CT 351, line 16), she then altered her story by claiming in her reply papers that the seventh amended complaint did not name Mason in the caption nor did it describe him in the introduction and, therefore, he was not a proper party to the seventh amended complaint (*cf.*, E033583 CT 412, lines 7-12). But here again, the record shows that Mason was indeed named in the caption and described in the introduction. (Related Appeal E020125 CT 1; Related Appeal E020125 CT 3, ¶ 31.)

Then, despite clear evidence to the contrary, Mason's attorney continued to maintain that the operative complaint,

as to Mason, was the *third* amended complaint in a later hearing had before the trial court. (E033583 CT 640, lines 25-27; E033583 CT 643, line 19.) She continued her misrepresentation in a declaration filed in support of her demurrer to Petitioner's eighth amended complaint, stating *under oath*, despite clear and well established evidence to the contrary, that "the last pleading to name MASON as a party was the third amended complaint, which was filed on April 24, 1995." (E033583 SCT 597, lines 14-16.) She then unabashedly restated the falsehood in ¶ 7 of said declaration: "Placed between a rock and hard place *because he was not named in the latest amended complaint (the seventh)*, Dr. MASON did what he could and filed a demurrer to the last complaint that named him (the Third), on June 20, 2002." (E033583 SCT 598, lines 13-15; emphasis is added.)

In her demurrer to the eighth amended complaint, Mason's attorney persisted with her falsehoods, stating: "Indeed, Dr. MASON's name is not even mentioned under the first cause of action!" (E033583 SCT 587, line 9.) She went on to state: "To be sure, Dr. MASON is not mentioned in the eighth amended complaint until page 22 [¶ 114]." (E033583 SCT 587, lines 13-14.) An examination of Petitioner's eighth amended complaint, however, shows that Mason, whose capacity is described initially on page 4 [¶ 23] of the complaint, is referred to and implicated on pp. 6-8, pp. 21-38, and in *every* paragraph under the heading, FIRST CAUSE OF ACTION, except ¶¶ 156 and 165. (E033583 CT 371, 373-375, 388-405.)

Then, even after the state trial court had made it clear to her that the operative complaint as to Defendant Mason was now indeed the 8th amended complaint, Mason's attorney filed in the U.S. Bankruptcy Court, on behalf of Mason (*cf.*, *In Re Roy and Debra Mason*, RS 03-16638 DN; *Vasek v. Debtor Mason*, Adv. RS 03-1514), papers that claimed the operative complaint in the state trial court was

the 3rd amended complaint. Petitioner challenged Mason's contention (*cf.*, Appendix, p. 32, lines 5-36) by bringing to the U.S. Bankruptcy Court's attention an exchange between the state trial court and Mason's attorney that demonstrated conclusively that the operative complaint at issue was indeed the 8th amended complaint and that Mason and his attorney were well aware this was so. (E033583 CT 644, line 18 to E033583 CT 645, line 9.)

> "THE [STATE] COURT: The Court's---in the Court's opinion, the 3rd amended complaint is now moot, and the 11th---that was probably a Freudian slip---the 8th amended complaint mentions Dr. Mason. And to the extent that Dr. Mason is in any way involved in this complaint, it is *solely on the basis of whatever allegations concern him in the 8th amended complaint. And the 3rd amended complaint is of no further force and effect.* [Emphases are added.]
>
> "If you would like us to make an order to that effect, that would be fine.
>
> "MS. ROBERTS: I think I'm understanding where the Court is coming from. In the Court's opinion *the 3rd amended complaint is no longer the operative complaint as to Dr. Mason.* [Emphasis is added.]
>
> "THE [STATE] COURT: Or as to anybody.
>
> "MS. ROBERTS: Or as to anybody. *I understand.* And that my responsive pleadings to now *need address the 8th amended complaint* where there's subs[tan]tive challenge or procedural, or a combination of those, if I understand correctly. [Emphases are added.]

"THE [STATE] COURT: Correct."

Upon being informed of the foregoing exchange between the state trial court and Mason's attorney, the U.S. Bankruptcy Court rejected Mason's contention and ordered the automatic stay modified to allow Vasek to proceed against Mason in the courts of review.

The foregoing is but one example of what Petitioner has had to endure throughout these past 12 years, with little succor from the courts below. Mason's attorney and the other respondents, to a lesser extent, are employing essentially the same tactics in their presentations before this Court.

IV. Respondent Mason and others like him are liable for acts of malicious prosecution, notwithstanding the appellate court's recent about face.

Respondents' claims to the contrary notwithstanding, there was nothing in the previous appellate decision that prohibited Petitioner from alleging a continuing violation that culminated in the malicious prosecution of an administrative proceeding against him. Indeed, Petitioner's appellate reply brief in the original appeal had informed the appellate court of his intention to include, in his amended complaint on remand, an action in negligence and an action in malicious prosecution. As to the action in malicious prosecution, Petitioner had stated on page 35 of his appellate reply brief:

> "The conduct, to which this general set of facts points, was of an on-going and continuing nature, culminating in the bringing of more than 40 charges of dismissal (described in detail in Vasek's sixth amended complaint) from which ultimately Vasek was exonerated completely. Thus, the

> abridged complaint will not only allege in sufficient detail the facts showing that Attorney Respondents are liable under 42 U.S.C. 1983 for participating in a nine-year-long course of action against Vasek, but it will also allege a cause of action in malicious prosecution against Attorney Defendants/Respondents and a number of District Defendants/Respondents, based upon WESTAMCO INVESTMENT CO. v LEE (1999), 69 Cal App 4th 481."

Though the appellate court stated, in the opinion that followed, that Petitioner would be precluded on remand from pursuing an action in negligence, the opinion made no such statement with regard to Petitioner's stated intention to pursue an action in malicious prosecution.

Indeed, in an order filed on September 3, 1999, the appellate court had gone the extra mile to state: "The court's preliminary review of the documents in these appeals, *including the findings of the administrative law judge* (Appendix D) and the remedial actions taken by appellant's college after the failed attempt to dismiss appellant (Appendix F), shows appellant's lawsuit to have been based on nonfrivolous allegations of improper treatment by his college." (Emphasis is added.)

Five years later, the appellate court did an about face. Confronted with the fact that, in 12 years, the case had not even progressed to the discovery stage, the appellate court chose to avoid embarrassment by finding against Petitioner under the guise of "procedural error." The effect was to punish Petitioner to the tune of $17,543.45 (in assessed costs, sanctions, and the eradication of costs previously awarded Petitioner) for his having demanded, *as of right*, to have the defendants, deemed by the trial court to have been dismissed from the case, appear in the trial court to answer his complaint and memorandum of costs on appeal.

CONCLUSION

The briefs submitted to this Court show that, while the appellate court in the original appeal executed its responsibilities dutifully, by contrast the appellate court in the appeal for which review is now being sought subjugated the Constitution, the teachings of this Court, and the notion of ordered government to the appellate court's own self interests---*i.e.*, the preservation of its image after it had mishandled the instant case, first in the issuance of an apparently incomplete opinion in the original appeal, followed by the debacle that emanated when, as a result of yet another error committed by the appellate court, the trial court on remand deemed some defendants to have been dismissed on appeal when, in fact, such was not the case. It was easier for the appellate court to lay blame at Petitioner's feet than to suffer embarrassment by acknowledging the true source of the problem.

This Court should review the within case to assure every future litigant that, no matter how embarrassing the error, no court will be permitted to place the preservation of its image ahead of the Constitution, the teachings of this Court, and the notion of ordered government.

Respectfully submitted,

Anthony G. Vasek
Petitioner In Propria Persona